SUPREME COURT, U.S.

Supreme Court of the United States

October Term, 1964

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No. 454

NICHOLAS J. O'CONNELL, JR., individually and as Chairman of the Master Executive Council of the pilots in the service of AMERICAN AIRLINES, INC., and the Negotiating Committee of said pilots, consisting of RICHARD LYONS, ROBERT T. GUBA, JOSEPH GARVEY, PAUL ATKINS and NICHOLAS J. O'CONNELL, JR., ex officio,

Petitioners,

against

JOSEPH V. MANNING, as President of the AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Nicholas J. O'Connell, Jr., *et al.*, petition for a writ of certiorari to review a judgment in the above-entitled case by the United States Court of Appeals for the Second Circuit.

Opinions Below

The opinion of the Court of Appeals is reported as *Ruby v. American Airlines, Inc.*, 329 F. 2d 11 (2d Cir. 1964), and is set forth in the Joint Appendix at p. 1 to p. 41.* The opinion of the United States District Court for the Southern District of New York is reported in 221 F. Supp. 301 and is set forth in Volume III of Record at p. 1b to p. 55b.

Jurisdiction

The judgment of the Court of Appeals was entered on February 14, 1964. A petition for rehearing and for rehearing en banc was denied on April 10, 1964. The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1).

Questions Presented

1. Does a Federal court have jurisdiction to enjoin a labor organization from activities, otherwise excluded from the court's jurisdiction by the Norris-LaGuardia Act, 29 U. S. C. §101 *et seq.*, solely on the grounds that such a remedy will give the plaintiff effective relief against a carrier which has violated the Railway Labor Act?

2. When a Federal court enters an injunction against a labor organization in order to effectuate a remedy against

* American Airlines was also a party to the action below, and it is bringing a separate and independent petition for review of matters concerning it. However, since many of the same materials are relevant to both petitions, a Joint Appendix is being filed in the interest of reducing costs to all parties.

a carrier under the Railway Labor Act, is the court released from the obligation to make the findings required by the Norris-LaGuardia Act, 29 U. S. C. §§107, 109, and the Federal Rules of Civil Procedure and from the other substantive and procedural requirements of the Norris-LaGuardia Act.

Statute Involved

The statute involved is the Norris-LaGuardia Act, 29 U. S. C. §§101-113, and particularly §§101, 102, 104, 105, 107, 108, 109 and 113, which sections are set out in the Joint Appendix pp. 70-76. In addition, the Federal Rules of Civil Procedure, Rules 52(a) and 65(d) are involved, and these Rules are set out in the Joint Appendix p. 84.

Statement of the Case

This case is another episode in the so-called "crew complement controversy" which has agitated the airline industry for the past several years. This controversy concerns questions of the number, type, duties and representation of men who comprise cockpit crews of commercial jet aircraft. This Court is not being asked to enter that dispute, but, rather, to pass upon certain questions which will have an important effect on the administration of the labor laws in general.

The opinions of both the District Court and the Court of Appeals are extensive. Although we would not agree with all the findings in those opinions, we do not take issue with those which are necessary to the disposition of this

Petition. We will, therefore sketch, as briefly as possible the facts as set out by the lower courts which provide the background for the instant petition.

The petitioners in this case are the representatives of the American pilot group. When negotiations by both the pilots and the flight engineers were beginning over a new contract in March, 1961, the pilots were part of the Air Line Pilots Association (ALPA), an organization representing virtually all the pilots employed by airlines in this country. In general, the position of the various parties was that the flight engineers, represented by the Flight Engineers' International Association (FEIA), sought the retention of a flight engineer as a member of the cockpit crew; ALPA insisted on a minimum of three pilots in cockpit crews; and American Airlines sought a reduction of the size of the cockpit crew from four to three.

The conflicting positions of ALPA, FEIA and American seemed irreconcilable until the "local" American pilot leadership made a proposal in July, 1962, which came to be referred to as the "O'Connell iffy". Under this proposal, the cockpit crew would be reduced from four to three; the position of the present staff of flight engineers would be secured; there would be a substantial reduction in hours; there would be single representation of the cockpit crew. This proposal promised to achieve the cardinal objectives of each of the groups. The Company was willing to consider this proposal because the cost of the improved working conditions and shorter hours were offset by the savings that would be made in avoiding pilot training for the present staff of flight engineers. (Such training would have been required to meet ALPA's demands.) After discussions involving all the parties, the proposal was found generally acceptable to the American pilot group, FEIA

and the Company. The American pilot proposal was substantially embodied in the so-called "crew complement agreement" which was initialed by the American pilots (petitioners), FEIA and American on December 1, 1962. This agreement was then deposited with the Chairman of the National Mediation Board, who had supervised the negotiations leading to its conclusion.

ALPA, the pilots' national organization, was the only dissatisfied organization. ALPA strenuously opposed the crew complement agreement as contrary to its policy, which it claimed required all three members of the cockpit crew to hold pilot licenses.* It was equally plain to the American pilots that they could not win their economic gains if they bowed to the demands being made by the ALPA International. Relations between the American pilot group and ALPA rapidly deteriorated over this issue and finally led to the expulsion of the American pilot leadership from ALPA and the establishment of an entirely separate pilots' union, the Allied Pilots Association. On November 13, 1963, after an election under the auspices of the National Mediation Board, Allied was certified as the exclusive bargaining representative of American's pilots.

During the weeks following the O'Connell proposal and while the proposal was being considered by the Company, the pilots also discussed it with FEIA's leadership.** As

* The licenses in question were the so-called "C&I" certificates which require only minimal pilot qualification, such as would be obtained for piloting a Piper Cub. A "C&I" would not qualify a crew man to pilot a jet, but it would enable ALPA to claim that the holder of the certificate was a "pilot" under its jurisdiction.

** O'Connell had discussed the proposal with the FEIA Chapter President in July, 1962, before even submitting it to the Company.

a result, a series of conferences were held by the pilots and FEIA for the purpose of effecting a merger of the two groups. "By the end of October, an agreement of merger had almost been completed * * *." [Rec. Vol. III, p. 18b.] As a result of these merger talks, on November 1, 1962, the pilots and flight engineers began collective bargaining with the Company through a joint committee composed of representatives of both the pilots and the flight engineers. By common consent, the chief spokesman for the combined committee was the leader of the pilot group, Capt. Nicholas J. O'Connell, Jr. It was under the auspices of this joint committee that the December 1, 1962 crew complement agreement was achieved. However, after that agreement there still remained certain unresolved issues, including the wage rate for flight engineers under the new contract.

Negotiations between the Company and its crew members continued under the auspices of the joint committee through the early weeks of January and February, 1963. The position and attitude taken by the pilots during the course of negotiations is best set out in the decisions of the District Court and the Court of Appeals:

> "Until a merger agreement between the two unions had been made, there necessarily was separate bargaining representation for pilots and for flight engineers. While the negotiating sessions were at times joint and while O'Connell at times acted as chief spokesman for the two committees, it was understood between them that the flight engineers would negotiate their own wages and that their separate representation had not been given up. This was an entirely natural arrangement, not only because at that stage the engineers did not want to put themselves entirely in the hands of the pilots, *but also because the pilots themselves hesitated to assume such a responsibility.*

"Thus as between pilots and engineers, there was no question but that the Chapter continued to be the representative of the engineers. *The pilots did not purport to act for the engineers.* As O'Connell testified: 'We considered ourselves the pilot committee'." (Record Vol. III, pp. 34b-35b.) (Emphasis added.)

* * *

"There is no doubt whatever that the Chapter is now, and at all relevant times has been, the 'true representative' under the Act of the 'craft or class' of flight engineer employees of American. It was so certified by NMB on May 25, 1955. There has since that time never been the slightest evidence from which the Company could conclude that the Chapter no longer represented such employees. *No one else now claims, or has ever claimed, to represent the flight engineers.*" (Record Vol. III, pp. 52b-53b.) (Emphasis added.)

* * *

"The majority cite not one word of evidence that O'Connell ever advanced any proposal affecting the engineers' salaries or working conditions save at their request or that he attempted to bind them to anything without their assent. Indeed my brothers concede, fn. 2, 'O'Connell did not purport to represent the flight engineers,' and Manning's own testimony, also cited, was 'that they (American) would only talk about our wages through Mr. O'Connell, *or through the Joint Committee*'" (Jt. App. p. 28). (Emphasis added.)

Despite substantial progress through the joint negotiations, the FEIA became increasingly restive as they saw the split between the American pilots and ALPA widen with no certain outcome. Negotiations between the FEIA, the pilots and the Company finally foundered on the FEIA's contention that the flight engineers could not be

bound to a contract under which they would be represented by a yet unidentified pilots' union. Despite the fact that the joint committee had, with FEIA's consent, negotiated on issues of particular concern to the flight engineers, the FEIA withdrew from the joint bargaining committee and insisted that the Company bargain with it alone as the representative of the flight engineers. This occurred after most of the terms of an agreement covering all cockpit crew personnel (including the basic crew complement agreement) had been agreed upon. The pilots and the Company continued negotiations on the few issues remaining and, on March 15, 1963, initialed an agreement. This agreement was never finally signed.

On March 1, 1963, ALPA initiated an action against American Airlines for an injunction to force American to deal with it as the exclusive representative of the pilots. On March 12, 1963, FEIA intervened in ALPA's action seeking injunctions requiring American to bargain with FEIA as the representative of the flight engineers; on April 4, 1963, the FEIA amended its intervening complaint to add an action for an injunction against the pilot group. Thus it was the FEIA's complaint that first brought the Petitioners into the litigation. On July 9, 1963, while the litigation was pending Allied signed a final collective bargaining agreement covering only pilots and not the flight engineer group.

On August 12, 1963, the District Court rendered a judgment severing the action brought by ALPA from the intervention by FEIA, dismissing ALPA's action,* and granting FEIA the preliminary injunctive relief it sought

* Affirmed 323 F. 2d 248, *cert. denied*, 84 S. Ct. 658 (1964).

against both American and the pilots. On February 14, 1964, the Court of Appeals for the Second Circuit affirmed the injunction for FEIA, and on April 10, 1964, denied a Petition for Rehearing *en banc*, Judge Friendly dissenting in both instances.

The grounds and substance for the injunction against the pilot group are set out in the last two sentences of the Court of Appeals' 22-page majority decision, stating:

> "Judge Wyatt was also justified in enjoining the pilot representatives from (1) bargaining with the Company concerning the rules, rates of pay and working conditions of the flight engineers, (2) making, publishing or implementing any agreement covering the rules, rates of pay or working conditions of the flight engineers or (3) interfering with, influencing or coercing the flight engineers with respect to their right freely to choose their bargaining representatives. The record and findings below support the reasonableness and necessity of these orders *for the complete and effective relief to which the flight engineers are entitled. Cf. Local 167* v. *United States*, 1933, 291 U. S. 293, 299; *Porter* v. *Warner Holding Co.*, 1946, 328 U. S. 395, 398" (Jt. App. p. 22). (Emphasis added.)

It is to the decision just cited and quoted that this Petition is directed.

POINT I

A Federal court may not assume jurisdiction to enjoin a labor organization in a labor dispute in order to give effect to a remedy against a third party.

This action involves a labor dispute.

The Norris-LaGuardia Act defines the term "labor dispute" at 29 U. S. C. §113(c):

> "The term 'labor dispute' includes *any controversy* concerning terms or conditions of employment, or *concerning the association or representation of persons* in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

The only possible controversy that could exist between two labor organizations such as the FEIA and Petitioners would be one "concerning the association or representation" of the persons in the cockpit crew assigned to various duties and functions. That controversy had at least tentatively been resolved on American by the crew complement agreement of December 1, 1963, in which both the pilots and flight engineers stated that there would be a single representative for cockpit crew members.

On Eastern Airlines the crew complement controversy, including the issue of representation, produced an unsuccessful strike of the FEIA against the carrier. At Eastern the Air Line Pilots Association maintained operations and cooperated with the carrier in replacing flight engineers with pilots. See *Flight Engineers Int'l Ass'n* v. *Eastern Airlines*, 311 F. 2d 745 (2d Cir.), *cert. denied*, 372 U. S. 945

(1963). The dispute generated much litigation and ultimately led to an election under the auspices of the National Mediation Board in which both ALPA and the FEIA sought certification as bargaining representative of the Flight Engineer group. ALPA was victorious in that election.

On United Airlines, the Air Line Pilots Association filed a request with the National Mediation Board for a new craft and class determination which would designate all cockpit crew members as constituting the appropriate bargaining unit. (See *Flight Engineers Int'l As'n* v. *National Mediation Board*, 294 F. 2d 905 (D. C. Cir. 1961), *cert. denied*, 368 U. S. 956 (1962).) The result of this move by ALPA was an election among the pilots and the flight engineers, conducted by the National Mediation Board, which resulted in the designation of ALPA as the bargaining representative for all cockpit crew members on that airline. N. M. B. Case No. R-3641; Certification June 4, 1964.

There has never been any dispute about the fact the Petitioners, whether considered as the original pilot leadership or as the Allied Pilots Association, constitute a labor organization entitled to the protection of the Norris-LaGuardia Act. *Division No. 14, O. R. T.* v. *Leighty*, 298 F. 2d 17 (4th Cir. 1962), *cert. denied*, 369 U. S. 885 (1962).

The acts enjoined are specifically removed from the Court's jurisdiction.

The Norris-LaGuardia Act, 29 U. S. C. §104, has denied the Federal courts of jurisdiction to enjoin a specific list of facts "involving or growing out of any labor dispute." These acts include:

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

* * *

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

"(i) *Advising, urging, or otherwise causing or inducing* without fraud or violence *the acts heretofore specified,* regardless of any such undertaking or promise as is described in section 3 of this Act."

It is precisely these acts which are covered by the District Court's order. It is not necessary to examine every detail of the injunction at this time; it is set out at length in the Joint Appendix hereto, pp. 51-52. It is sufficient to point out that the Petitioners are, among other things, enjoined "from, directly or indirectly, in any way, manner or form, or by any means whatsoever * * * *influencing* * * * *any* of the flight engineer employees * * * with respect to their free and untrammeled right of selecting or designating their representative * * *."

On its face, this order enjoins precisely those acts which are removed from the Court's jurisdiction. Moreover, it

enjoins precisely that type of group, *i.e.*, labor organizations which the Norris-LaGuardia Act was passed to protect. The Court's order is applicable to two of the three men in the confines of a cockpit of a jet flying some 600 miles per hour. Two of these men (the pilots) may not "indirectly" influence the third (the flight engineer) in his choice of representative. The pilots, for instance, may not be able to comment upon the wisdom of a flight engineer strike which grounds the airline; they may not be able to comment to flight engineers about an errant leadership which engages in picketing and other displays which may damage the Company and all employees. Such comments would presumably "indirectly influence" the flight engineers.

Industrial relations in the airline industry move with the same supersonic speeds as the technological advances in that industry. The crew complement issue only became acute with the introduction of jet aircraft. The next major advance in airline technology is only a few years in the future with the introduction of aircraft flying at two and three times the speed of sound. The effect upon the work requirements and assignments of the men manning those aircraft is impossible to predict. In the past, technological advance has meant the complete elimination of certain cockpit crew crafts such as the flight radio officer and the navigator. In the future, it may mean a drastic realignment and reassignment of jobs and duties and representation.

While this very litigation was pending, the FEIA intervened in the pilot National Mediation Board representation proceedings against the American pilots and in support of the position taken by the ALPA International.

FEIA's publications have been filled with scurrilous comments about Captain O'Connell.

It is plain that the application of the District Court's order is both unfair and impractical. It restricts rather than enhances the freedom of expression and freedom of choice of two groups of employees—the pilots *and* the flight engineers. The Norris-LaGuardia Act, and particularly Section 4, was designed to permit the widest range of comment and action by labor organizations and employees concerned with questions of representation. There is absolutely no basis in the statutory language or the legislative history for the order which was entered in this case.

The jurisdictional limitations of the Norris-LaGuardia Act cannot be ignored in order to aid a remedy against a third party.

The Court of Appeals majority opinion disposes of *all* the issues raised by the additional defendants, including the critical jurisdictional limitations of the Norris-LaGuardia Act, in one sentence [Jt. App. p. 22]. In that sentence, the majority cites two "comparable" cases in support of the injunction. One of these cases, *Porter* v. *Warner Holding Co.*, 328 U. S. 395 (1946), involved the application of the Emergency Price Control Act of 1942 and held that despite the absence of legislative authorization the court could order *restitution* of excessive charges where it has jurisdiction to *enjoin future excesses.*

The other "comparable" case cited in the majority opinion, *Local 167, Int'l Brotherhood of Teamsters* v. *United States*, 291 U. S. 293 (1934), involved an appeal in an anti-trust case from an injunction issued in 1927—some five years before the Norris-LaGuardia Act was even en-

acted. The defendants in this case included wholesalers and distributors of poultry as well as a union of "schochtim" or persons qualified to slaughter poultry in accordance with Jewish dietary laws. These same defendants had been convicted of criminal violations of the Sherman Antitrust Act in separate litigation. On the appeal in the injunction action, the defendants argued that the decree was too broad. The Supreme Court rejected the defendants' contention that the government was required to offer specific evidence "that coercion has been practiced or is threatened in respect of every detail or commodity" and held that the government was entitled to broad and effective relief. In the *Local 167* case, the Court nowhere considers the Norris-LaGuardia Act; the issues involved did not constitute a "labor dispute" but concerned an antitrust law violation; the defendants had been proved guilty of violating the applicable statute beyond a reasonable doubt.

The only rationale supporting an injunction against the additional defendants which we can discern from the majority's opinion in the instant case is that such an injunction would make the remedy against American Airlines more "effective". As we will discuss more fully in Point II, there is no finding that the additional defendants themselves were guilty of any wrong.

It is true that in some instances there has been an "accommodation" between purposes of the Norris-LaGuardia Act and those of the Railway Labor Act. These have involved situations where it has been necessary for the Court to protect the integrity of the processes and procedures of the Railway Labor Act itself, *e.g., Brotherhood of Railroad Trainmen* v. *Chicago River and Ind. R. Co.*, 353 U. S. 30 (1957), and where employers have been ordered to ful-

fill the positive mandates of the Act, *e.g., Virginian Railway Co.* v. *System Federation No. 40,* 300 U. S. 515 (1937). Neither of these situations exist with respect to the additional defendants in the instant case.

There has been no charge that the additional defendants acted in any way to disrupt or interfere with the normal processes of the agencies charged with the administration of the Act. It is true that a major part of the District Court's order is derived almost verbatim from the order of the District Court in the *Virginian Railway case, supra.* See *Virginian Ry. Co.* v. *System Federation No. 40, Rec. on Cert.,* pp. 282-83; but far from supporting the propriety of the instant order, this illustrates the confusion of the lower courts in evaluating the relative rights of the Petitioners (pilots), the FEIA and American Airlines. As illustrated by the *Virginian Railway* case, the scheme of the Railway Labor act is certainly to proscribe influence by the carrier on employees' choice of representative; it is equally certain that the Railway Labor Act guarantees the rights of every employee to join or influence his fellow employees to join or support any labor organization. See Railway Labor Act, §2 (Fourth), 45 U. S. C. §152 Fourth. There is no basis for contending that the organization representing pilots is charged by the Act with any obligation to the organization currently representing the flight engineers. To the contrary, every presumption of the Railway Labor Act and the Norris-LaGuardia Act is that the pilots shall have the widest latitude to compete with and vigorously protect their interests in matters concerning the representation of crew members and the assignment of job duties.

The requirements of the Norris-LaGuardia Act cannot be ignored by a Federal court simply to foster "effective" remedies. In *Sinclair Refining Co.* v. *Atkinson*, 370 U. S. 195 (1962), the Court held that the Federal policy embodied in Section 301 of the Taft-Hartley Act in favor of the maintenance and enforcement of labor contracts did not mean that an injunctive remedy could be given against a labor union to enforce such a contract. Similarly, this Court has held that the Norris-LaGuardia Act may not be disregarded by a court, even where the union's actions may constitute an interference with foreign commerce or with the "internal economy of a vessel registered under the flag of a friendly foreign power." *Marine Cooks & Stewards* v. *Panama S.S. Company Ltd.*, 362 U. S. 365 (1960). This Court has recognized that the Federal courts simply may not ignore the Congressional mandate wherever and whenever they may think it appropriate or, in their judicial discretion, the "best thing" for the country.

In *Order of Railroad Telegraphers* v. *Chicago and Northwestern Ry. Co.*, 362 U. S. 330 (1960), this Court broadly reviewed the applicability of the Norris-LaGuardia Act in a Railway Labor Act context. In that case, the Court of Appeals for the Seventh Circuit enjoined the union's actions because they represented "an attempt to usurp legitimate managerial prerogatives" and the carriers also argued that an injunction should be issued because the agencies of the state had approved the same conduct by the carrier which the union was trying to prevent. In holding that the lower court was without jurisdiction to enjoin the action of the union, this Court said (pp. 335-36):

"Section 13(c) of the [Norris-LaGuardia] Act defines a labor dispute as including, 'any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.' Unless the literal language of this definition is to be ignored, it squarely covers this controversy. Congress made the definition broad because it wanted it to be broad. There are few pieces of legislation where the congressional hearings, committee reports, and the language in the legislation itself more clearly point to the necessity for giving an Act a construction that will protect the congressional policy the Act adopted. Section 2 of this Act specifies the public policy to be taken into consideration in interpreting the Act's language and in determining the jurisdiction and authority of federal courts; it is one of freedom of association, organization, representation and negotiation on the part of workers. The hearings and committee reports reveal that Congress attempted to write its bill in unmistakable language because it believed previous measures looking toward the same policy against non-judicial intervention in labor disputes had been given unduly limited construction by the courts." (Footnotes omitted.)

We submit that the foregoing statement from the *Railroad Telegraphers* case and the other authorities cited set out the governing rule of decision for application of the Norris-LaGuardia Act. Even if the theory suggested in the Court of Appeals majority opinion were fully articulated, we do not believe that it would fall within the rare exceptions to the Norris-LaGuardia Act which have been

delineated by this Court. Such a theory would not comprehend any policy or equitable rule which would have even equivalent stature to those already rejected by this Court as proposed rationales for evading the Norris-LaGuardia Act.

Questions of jurisdiction are among the most important matters which this Court considers. *Local No. 438 Construction & General Laborers' Union* v. *Curry*, 371 U. S. 542 (1963). In a labor case the mere assertion of jurisdiction by a court may substantially and radically affect the relative positions of the parties to the controversy. The decision of the jurisdictional question by the courts below is marked by both vague uncertainty and error—both defects are bound to breed mischief in the Federal courts and in labor relations until the issue presented is entertained and decided by this Court. May a Federal court enter an injunction in a labor dispute against a labor organization solely because it is in aid of a remedy against an employer? The Court of Appeals has apparently answered this question affirmatively, and its decision cannot help but influence the conduct of administrative agencies, courts and litigants operating under both the National Labor Relations Act and the Railway Labor Act. If the Court of Appeals has decided this question incorrectly, the issue is of such importance that it will ultimately be resolved by this Court. We submit that much harm could be prevented if this matter were decided now.

POINT II.

A Federal court may not ignore the procedural and substantive requirements of the Norris-LaGuardia Act and the Federal Rules of Civil Procedure.

Wholly apart from the jurisdictional capacity of the Federal courts to enjoin certain types of acts involving labor disputes, there are procedural and substantive limitations governing the circumstances under which *any* injunctive relief can be granted in a labor dispute. The courts below made no pretense of observing these requirements. Again, the only barely discernible rationale for the courts' approach is that such requirements need not be observed where a court feels it necessary to give broad relief in order to remedy the acts of a *third* party. See *supra*. Such an argument carries no more weight in evading the procedural and substantive limitations of the Norris-LaGuardia Act and the Federal Rules of Civil Procedure than it does in evading the jurisdictional limitations.

Requirements for supporting findings

Both the Federal Rules of Civil Procedure and the Norris-LaGuardia Act require that an interlocutory injunction such as that imposed upon the pilots be based upon adequate findings of fact and conclusions of law. Federal Rules of Civil Procedure, Rules 52(a), 65(d); Norris-LaGuardia Act, 29 U. S. C. §§107, 109.

It is thus clear that the order of the District Court must be based upon some findings of wrongdoing by the pilots which would justify the granting of a preliminary injunction. The Norris-LaGuardia Act, 29 U. S. C. §107, makes

it plain that the requirement of findings of wrongdoing and the other prerequisites of injunctive relief is so crucial in a labor dispute that it assumes *jurisdictional* dimensions.

We have already quoted, *supra*, pp. 6-7, all of the material in both the District Court and the Court of Appeals which bears directly on the relations between the Petitioners and the flight engineers. We find no hint or suggestion of wrongdoing *by* the Petitioners in the courts' opinions—just the contrary, *supra*, p. 7.

Compliance with Rules 52(a) and 65(d) is mandatory. *Shannon* v. *Retail Clerks Int'l Ass'n*, 128 F. 2d 553, 555 (7th Cir. 1942).

The mere fact that a party has certain relations with another party which may be guilty of some wrongdoing is insufficient in the absence of further findings to enter an order against all parties joined to the action. *Hartford-Empire Co.* v. *United States*, 323 U. S. 386, 405 (1945).

The absence of any findings of wrongdoing by the pilots, makes it impossible for the Court to enter a decree which complies with the Federal Rules.

In *NLRB* v. *Express Publishing Co.*, 312 U. S. 426, 436 (1941), the NLRB had found that the respondent employer had in fact violated the applicable statute. However, in that case this Court found that the Board had gone too far in issuing a generalized cease and desist order which was couched in terms of the statute itself, rather than the specific conduct of the employer. In the instant case the District Court's order comprehends and enjoins a course of conduct equally as broad as that described by the Court in the *Express Publishing* case. In that case, unlike the instant case, the injunction was at least predicated on a finding of *some* wrongdoing by the party enjoined.

The Norris-LaGuardia Act, by specifically imposing standards for findings upon a court in a labor dispute case, which are jurisdictional in nature, indicates that in a labor case the court must adhere to an even higher level of specificity in its findings before it can proscribe otherwise permissible activities. This is illustrated in *Chicago, Rock Island & Pacific R.R. Co.* v. *Switchmen's Union*, 292 F. 2d 61 (2nd Cir. 1961), in which the Court stated:

> "That section [Norris-LaGuardia Act §4] uses the most emphatic words possible—'No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction' against a peaceful strike. To overcome that bar plaintiffs had the burden of showing, as a matter of law, that the broad command of §4 is subject to an exception when a Union has violated its duties under the Railway Labor Act and, as a matter of fact, that the defendant here had done that. *They were obliged to meet that burden, not simply to show they might be able to meet it;* until they met it, the court was without power to issue an injunction whether temporary or permanent." [Emphasis added.]

Since there were no findings of any wrongdoing by the pilots, it must follow, *a fortiori*, that there has been no finding of a *proven* violation of any particular duties under Railway Labor Act by the pilots. Thus the jurisdictional barriers of the Norris-LaGuardia Act clearly were not overcome by either the respondents or the courts below.

Other prerequisites to injunctive relief

We will not argue at any length concerning the failure of the court's order to comply with the normal prerequisites to the issuance of a preliminary injunction against the Petitioners. In a labor dispute some of these prerequisites, such as a finding of irreparable injury to the moving party and a finding of greater injury to the moving party from a denial of relief than to the respondent from the grant of relief, are of jurisdictional importance and are set out in the statute itself, 29 U. S. C. §107 (b) (c). Other prerequisites, such as the probability of the moving party's success on a final trial and considerations of public policy, lie to some extent within the discretion of the trial court. *Moore's Manual—Federal Practice and Procedure,* pp. 629-30. However, in this case it is not necessary for us to reweigh the evidence or urge this Court to substitute its judgment for the District Court's. The failure of the District Court's order to comply with the prerequisites just mentioned is subsumed by the absence of *any* findings of wrongdoing by the pilots, which we have already discussed at length. Clearly, in the absence of such findings, there could be no basis for a court's exercise of discretion in favor of the appellees with respect to irreparable injury, balance of convenience, public policy, probable success or any other prerequisite to the issuance of a preliminary injunction.

The respondents did not comply with §8 of the Norris-LaGuardia Act.

Section 8 of the Norris-LaGuardia Act, 29 U. S. C. A. §108, requires that complaining party, as a prerequisite to injunctive relief "to make every reasonable effort to settle such dispute." The purport of that section was explained by this Court in *Brotherhood of R.R. Trainmen* v. *Toledo, P&W R.R.*, 321 U. S. 50, 56, 64 S. Ct. 413, 417 (1944):

> "Broadly, the section imposes two conditions. If a complainant has failed (1) to comply with any obligation imposed by law or (2) to make every reasonable effort to settle the dispute, he is forbidden relief. The latter condition is broader than the former. One must not only discharge his legal obligations. He must also go beyond them and make all reasonable effort, at the least by the methods specified if they are available, though none may involve complying with any legal duty. Any other view would make the second condition wholly redundant. It clearly is not the section's purpose, therefore, by that condition, to require only what one is compelled by law to do."

The findings of the court below emphasize the fact that the only issue of substance raised by the flight engineers as justification for their abandonment of joint negotiations with the pilots was the absence of any clearly identified bargaining representative of the pilot group. (Record, Vol. III, p. 37b.) This justification is not, and for some time has not been, available to the FEIA. As early as April 24, 1963, an affidavit was submitted to the court showing that a representation petition of the Allied Pilots Association was supported by some 76% of the pilots (later increased to 84% and then 90%), and the

identity of the pilots' representative was clearly defined. When this affidavit was submitted to the District Court, Judge Wyatt gave the complaining parties an opportunity to reconsider their complaints and pending motions. Following ALPA's lead, the FEIA refused to suspend its complaint pending the outcome of the National Mediation Board proceedings, but instead insisted upon pressing forward with its suit against American's pilots.

Each succeeding step in the controversy between ALPA and American's pilots made still clearer the identity of the pilots' representative—the National Mediation Board's verification of 84% of the pilots' support for Allied, the Board's decision to go forward with the representation proceeding in the absence of any findings of undue influence by the company, the decision of the District Court below, the decision of the Court of Appeals in Docket No. 28417, Joint Appendix pp. 53-69. Yet, at no time did the FEIA seek to renew the negotiations with the pilots which *the FEIA itself* had ruptured. Instead, the FEIA sought to delay the National Mediation Board's representation proceedings which led to the actual certification of Allied.

With the single obstacle to joint negotiations cleared away, the party which abandoned those negotiations did not seek their resumption on the terms they were abandoned. Instead, the instant litigation was pressed. Under such circumstances, FEIA may not obtain the aid of a Federal court and a court of equity. *Rutland Ry. Corp.* v. *Brotherhood of Locomotive Engrs,* 307 F. 2d 21 (2d Cir. 1962), *cert. denied,* 372 U. S. 954.

Conclusion

It seems to us quite apparent that the order against the Petitioners herein was simply tacked on to the decision against American Airlines. In the District Court, there was absolutely no effort to justify the injunction against the Petitioners. In the Court of Appeals, the majority made only a passing reference to the injunction against the Petitioners and did not deal at all with the serious issues raised by enjoining a labor organization under these circumstances.

It may well be that the courts below viewed the case primarily in the context of relations between American Airlines and the FEIA. In that context, the courts may have wished to give the "wronged" party as broad and sweeping relief as was within the judicial power. However, motives of sympathy and good will are not sufficient excuse to limit the actions of an innocent party or ignore the important jurisdictional, substantive and procedural limitations upon judicial action in this type of case.

Courts are too often led into error when they are urged to grant relief for some such reason as 'it won't really hurt one party, but it will be of great help to the other.' When a court responds to such specious arguments, it is generally the public interest and litigants yet unknown who are 'really hurt'. In the instant case, there now stands a decision by one of the most respected courts of appeals in the Federal system which invites other courts and the Bar to follow a rule which suggests that injunctions may be granted in a labor dispute against a labor organization, notwithstanding the restrictions of the Norris-LaGuardia Act and

the Federal Rules, where a court in its discretion believes it necessary or helpful in aid of a remedy against an employer. Such a doctrine will have ramifications which go far beyond the respective rights of the parties in this litigation. Before such a novel doctrine is absorbed into the Federal judicial design, we think it necessary and appropriate that this Court review the question through this petition for certiorari.

For the foregoing reasons, it is respectfully submitted that the petition for certiorari should be granted.

Respectfully submitted,

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